SINGLE BENCH

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CF 1001

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 5975 OF 2006

PETITIONER
Plaintiff

Yogendra Kumar Kesharwani, S/o Late Shri Shiv Prasad Kesharwani, aged about 48 years, R/o Kaalimai Ward, P.O. Mungeli, Tahsil -Mungeli Distt. Bilaspur (Chhattisgarh)

VERSUS

RESPONDENTS
Defendants

1. Chandra Kumar Kesharwani S/o Late Shri Shiv Prasad Kesharwani, aged about 70 years, P. O. Mungeli, Tahsil Mungeli, District Bilaspur (Chhattisgarh).

2. Smt. Ganeshi Bai, W/o Shri Posagilal Gupta, aged about 70 years, R/o Raipur District Raipur (Chhattisgarh).

3. Suryakant Kesharwani, S/o Shri Chandra Kumar Kesharwani, aged about 43 years,

4. Ramakant Kesharwani, S/o Shri Chandra Kumar Kesharwani, aged about 41 years,

   Respondent No.3 & 4 R/o Gandhi Ward, Mungeli,Tahsil Mungeli Distt.Bilaspur (C. G)

5. Smt.Geeta Bai, Wd/o Late Shri Raj Kumar Kashyap, aged about 41 years,

6. Yogendra Kumar, S/o Late Raj Kumar Kashyap, aged about 26 years,

7. Upendra Kumar, S/o Late Raj Kumar Kashyap, aged about 24 years,

P.R. No. 5738/06
Presented by Shri Rakesh Dubey
dated 23/10/06

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Respondents 5, 6 & 7 R/o Village Jarhagaon, Tahsil Mungeli, District Bilaspur (Chhattisgarh).

8. State of Chhattisgarh through Collector Bilaspur District Bilaspur (Chhattisgarh).

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

XI-HC-22

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P.(C) No. 5975/2006

मामला क्रमांक ..... सन् / 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

10.11.2006

Shri Ashish Shrivastava, counsel for the Counsel for the Petitioner.

Heard on admission.

By way of this writ petition filed under Article 226/227 of the Constitution of India the petitioner has challenged the legality of the order dated 02.8.2006 passed in Civil Appeal No. 22-A/2006 by the Additional District Judge, Mungeli by which an application filed by the plaintiff/appellant under Order 41 Rule (5) of the Code of Civil Procedure has been dismissed by the First Appellate Court.

The brief facts are that the plaintiff filed a suit for declaration, permanent injunction and possession and the aforesaid civil suit was dismissed vide judgment and decree dated 03.2.2006 passed by the trial Court. The last Para of the aforesaid judgment says that since the plaintiff failed to establish his case, therefore, the suit was liable to be dismissed and accordingly it was dismissed.

Learned counsel for the petitioner submits that since it was apprehended by the petitioner/appellant that during the pendency of first appeal, mutation etc., in the revenue records may be undertaken by the defendant after dismissal of the suit, therefore, the petitioner had filed an application for stay of the execution of the judgment and decree under Order 41 Rule (5) of C.P.C.

Needless to say that in such situation, for the interim relief of protecting right pertaining to the suit property, the provisions of Order 41 Rule 5(1) of C.P.C. were not available to the plaintiff, instead, plaintiff may have filed an application for temporary injunction under Order 39 Rule 1 & 2 of C.P.C.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

W.P.(C) No. 5975/2006

मामला क्रमांक ..... **सन्** **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Be that as it may, for the present, it is suffice for this Court to say that in fact no prima facie case was made out in favour of the plaintiff/petitioner to pass any interim order on the assertions made in the said interim application and the first appellate Court has rightly rejected his application filed under the aforesaid provisions of law.

The petition has no merits and the same is dismissed.

However, as the impugned order shows that the First Appellate Court has already fixed the case for final hearing, it is observed that the said Court shall expedite the hearing of the case at the earliest so that the dispute raised between the parties is settled once for all.

M.W.P.No.4452/2006 for grant of ad-interim relief and I.A.No.10399/2006 also stand disposed of.

Sd/-
Sunil Kumar Sinha
Judge

Rao

(पीछे देखिये)